

NTSB Order No. EA-4937

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 16th day of January, 2002

Docket SE-15878

1, 1999, repeatedly operating an aircraft 1) within 500 feet above ground level (AGL) of persons or structures on the ground, and 2) repeatedly in aerobatic flight below 1500 feet AGL, as alleged, and upheld a 180-day suspension of respondent's airman certificate.<sup>2</sup> As discussed below, we deny the appeal.

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<sup>2</sup>The regulations state, in pertinent part:

**§ 91.13 Careless or reckless operation.**

(a) Aircraft operations for the purpose of air navigation. No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.

**§ 91.119 Minimum safe altitudes: General.**

Except when necessary for takeoff or landing, no person may operate an aircraft below the following altitudes:

(a) Anywhere. An altitude allowing if a power unit fails, an emergency landing without undue hazard to persons or property on the surface.

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(c) Over other than congested areas. An altitude of 500 feet above the surface, except over open water or sparsely populated areas. In those cases, the aircraft may not be operated closer than 500 feet to any person, vessel, vehicle, or structure.

**§ 91.303 Aerobatic flight.**

No person may operate an aircraft in aerobatic flight....

\* \* \* \* \*

(e) Below an altitude of 1,500 feet above the surface....

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For the purposes of this section, aerobatic flight means an intentional maneuver involving an abrupt change in an aircraft's attitude, an abnormal attitude, or abnormal acceleration, not necessary for normal flight.

At the hearing, two eyewitnesses testified that they observed respondent's Sukoi 29 aircraft on several occasions between May 27 and June 1, 1999, in the vicinity of Catlett, Virginia, over a rural area of farmland, trees, and houses.<sup>3</sup> According to these witnesses, the aircraft performed aerobatic maneuvers over their houses and occasionally leveled out, as stated by one witness, near treetop level, and by the other, within 200 feet of his property.<sup>4</sup> Tr. at 62. Both witnesses indicated that the maneuvers were extreme and low enough to place them in fear for their safety and the safety of their families.<sup>5</sup> One witness, David Forney, stated that, more than once, when such low-level aerobatics were going on over his house, he drove to Manassas Airport, waited near the end of the runway, and soon saw respondent's plane land and go to a hangar there.<sup>6</sup> Tr. at 67-68.

Brian Dunlop, an FAA aviation safety inspector based at the Dulles, Virginia FSDO (Flight Standards District Office),

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<sup>3</sup>Respondent admitted that he owns a Sukhoi 29 aircraft through a corporation and that he operates the aircraft out of Manassas Airport. Transcript (Tr.) at 98, 179; Exhibit (Ex.) A-3. The witnesses also testified that respondent's aircraft has flown over their properties numerous times in a similar manner.

The two witnesses had never met before the hearing. Tr. at 79; 87-88.

<sup>4</sup>One witness gained experience in measuring distances while in the military. Tr. at 71.

<sup>5</sup>A witness remarked that on at least one occasion, it caused dishes to fall off the wall. Tr. at 65-66.

<sup>6</sup>Mr. Forney had a conversation with respondent in front of the hangar and asked him not to perform aerobatics over his house. Tr. at 68. According to Mr. Forney, respondent told him it was free airspace and he would do what he liked. Id.

testified that respondent's Sukoi aircraft is a Russian built dual-seat aerobatic aircraft with a 300-horsepower radial engine. Tr. at 92. Inspector Dunlop, a former commercial airline pilot with over 12,000 flight hours, stated that, on May 2, 1999, he was operating a small aircraft near Catlett, Virginia, when he had a near miss with an aircraft that was performing aerobatic maneuvers.<sup>7</sup> The aircraft came straight at him vertically from above, went below 1400 feet, "almost to the ground."<sup>8</sup> Tr. at 95; 138. He had to take evasive action three times in order to avoid a collision. Id. A couple of weeks later, Inspector Dunlop was assigned to investigate the allegations that led to the complaint against respondent in the instant case. During the investigation, the inspector realized that the aircraft involved was the same one with which he had a close encounter earlier that month. He spoke with respondent via telephone and learned that respondent had been the pilot of the subject aircraft on May 2, 24, 25, and 27 at the times and places reported.<sup>9</sup> Ex. A-3.

Respondent confirmed that he owned the aircraft and was its only pilot. Tr. at 98. He stated that he did not fly within 500 feet of people or dwellings, and performed aerobatics at an altitude of less than 4500 but more than 1500 feet AGL. Tr. at 171-72. He claimed that he had been practicing in the vicinity

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<sup>7</sup>During the course of the hearing, respondent admitted that it was he who Inspector Dunlop encountered.

<sup>8</sup>The incident he described was not one specifically alleged in the complaint.

<sup>9</sup>Respondent told him that, "It is free airspace, see and be

of Catlett, Virginia, for aerobatic competition (although he had never entered a competition) and that it would serve no purpose to perform aerobatics below 1500 feet AGL, as that would disqualify him from competition. Tr. at 172-73, 177-78.

On appeal, respondent argues that the law judge made erroneous credibility determinations by failing to adequately consider the personal biases of the Administrator's witnesses. This argument is unpersuasive. The testimony revealed and, hence, the law judge was aware, that the two eyewitnesses disliked the noise generated by respondent's aircraft and preferred that respondent (or anyone, presumably) not perform aerobatics near their homes. Similarly, he was aware of Inspector Dunlop's aerial run-in with respondent. When rendering his decision, the law judge took into account any bias of each witness, including respondent, and obviously made a determination in favor of the Administrator's witnesses. His determination is reasonable and supported by the evidence.

The law judge was in the best position to observe the demeanor of the witnesses and is entitled to our deference. We will not disturb his credibility determinations unless they are arbitrary or capricious. See, e.g., Administrator v. Smith, 5 NTSB 1560, 1563 (1987). Respondent has presented us with no reason to second-guess the law judge's determination. Dissatisfaction or disagreement with the outcome is an insufficient basis upon which to overturn a credibility finding.

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(..continued)  
seen." Ex. A-3.

See Administrator v. King, 7 NTSB 1364, 1365 (1991);  
Administrator v. Klock, 6 NTSB 1530, 1531 (1989).

Respondent also claims that he was prejudiced by the involvement of Inspector Dunlop in the case, and by the absence of radar data of the flights at issue.<sup>10</sup> Respondent had the opportunity to advance those theories before the law judge, and he did. He did not, however, introduce any evidence to support his theories, other than his own testimony. The law judge weighed the evidence submitted and found that the preponderant evidence supported the charges alleged. We see no error in his ruling.

We have considered respondent's remaining contentions and find them unpersuasive.

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondent's appeal is denied;
2. The initial decision is affirmed; and
3. The 180-day suspension of respondent's private pilot certificate shall begin 30 days after the service date indicated on this opinion and order.<sup>11</sup>

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<sup>10</sup>Inspector Dunlop's supervisor testified that he reviewed all the work in the case and approved of the way the investigation was conducted. As for the radar data, Inspector Dunlop stated that it was not available for altitudes of less than 800 feet most of the time. Tr. at 167.

<sup>11</sup>For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to FAR section 61.19(f).

BLAKEY, Chairman, CARMODY, Vice Chairman, and HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.